

### **REMARKS/ARGUMENTS**

This communication is in response to the Non-Final Office Action dated July 1, 2010. Claims 1-25 were previously canceled, without prejudice. Claims 33-49 have been withdrawn from consideration. Claim 26 has been amended. New claim 51 has been added. No new matter has been added. Claims 26-51 remain pending in this application with claims 26, 33, 39, 43 and 49 being the only independent claims. Reconsideration is respectfully requested.

### **Election/Restriction**

In the June 22, 2010 Response to the Restriction Requirement, Applicants traversed the restriction on the grounds that no serious search burden exists. The Examiner in the outstanding Office Action does not deem this argument to be persuasive on the basis that the “search burden is not an element of a restriction requirement under PCT.” {July 1, 2010 Non-Final Office Action: p. 2, paragraph 1} The present application is not a PCT International Application. Instead, it is a US national stage patent application that arises from a PCT International Application. Such a US national stage patent application is governed by US Patent laws and regulations, not PCT regulations. For example, the Examiner in rejecting the claimed invention did not apply PCT Article 33 standards of “novelty” and “inventive step,” but correctly applied US Patent law requirements under 35 U.S.C. §102 and 103. Similarly, it is improper for the Examiner to apply PCT lack of unity practice to the present national stage patent application that should be governed by US Patent laws and restriction practice. Should the Examiner maintain his position that PCT lack of unity of invention rules governs the present US national stage application, Applicants request that the Examiner cite to the statutory grounds for doing so.

Applying accepted US Patent laws and regulations, if the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions. MPEP §803 For the reasons previously articulated in the June 22, 2010 communication, Applicants submit that no such serious burden exists in the present application and request that the restriction be withdrawn and all claims be considered.

### Claim Objections

Claim 50 has been objected to on the basis that it has been listed twice. Applicants have provided a complete listing of the claims herewith with claim 50 only provided once. Withdraw of the objection in view of the amendment to the claim is therefore requested.

### Prior Art Rejections

Claims 26-29 and 50 are rejected under 35 U.S.C. §102(b) as anticipated by Faerber (U.S. Patent No. 2,787,978).

Claims 30-32 are rejected under 35 U.S.C. §103(a) as obvious over Faerber in view of Rubens et al. (U.S. Patent No. 2,336,298).

Applicants respectfully traverse the outstanding prior art rejections for at least the reasons discussed below.

### Independent Claim 26

processing ~~subjecting~~ the individual charges of the product to be coated to at least one process step in individual, ~~separate~~ processing chambers (7-13; 72-74) separated in the axial direction of the drum (1, 91), wherein each processing chamber is closed off from one another; and

transporting the product (5) residing in a respective processing chamber (7-13; 72-74) in the cyclical transport mode from the one processing chamber (7-13; 72-74) into the additional adjacent processing chamber (7-13; 72-74) by at least one longitudinal conveyor (3, 76) which conveys in the axial direction of the drum (1, 91) decoupled from rotary motion of the at least one rotatably driven drum (1, 91).

Claim 26, as amended, is distinguishable over the prior art in that it calls for the step of “subjecting the individual charges of the product to be coated to at least one process step in individual processing chambers (7-13; 72-74) separated in the axial direction of the drum (1, 91), wherein each processing chamber is closed off from one another.” (emphasis added)

Support for the amendment to the claim is found in dependent claims 19 and 27, as

originally filed. The spiral rib 20 fixed to the internal wall of the cylinder in Faerber does not extend to the center of the cylinder 15, 16 (see the cross sectional view depicted in Figure 3). Since spiral rib 20 does not extend to the center of the cylinder no individual, separate processing chambers closed off from one another are formed, as found in claim 26.

Claim 26, as amended, further specifies that the at least one longitudinal conveyor is “decoupled from rotation of the at least one rotatably driven drum.” Support for this amendment to the claim is found in paragraphs [0016]; [0020]; [0024] of the specification.

To the contrary, Faerber discloses that the spiral ribs are fixed to the internal wall of the cylinder 15 which, in turn, is mounted in the drum 1 for rotation therewith. (Col. 2, ll. 44-55) Thus, the spiral ribs, 20 mounted to the internal wall of the cylinder rotate with the drum. Claim 26, calls for the longitudinal conveyor to be decoupled from rotation of the drum.

#### **Dependent Claim 27**

Claim 27 is further distinguishable over the prior art in that it calls for “transporting the product (5) residing in a respective processing chamber (7-13; 72-74) in the cyclical transport mode from the one processing chamber (7-13; 72-74) into the additional adjacent processing chamber (7-13; 72-74).” Nothing in Faerber either discloses or suggests that the jubes disposed within one revolution of the spiral rib (“a respective processing chamber”) pass or advance to an adjacent revolution of the spiral rib (“the additional adjacent processing chamber”).

#### **Dependent Claim 28**

Claim 28 provides “transporting the product (5) from the one processing chamber (7-13; 72-74) to the next processing chamber by a longitudinal conveyor (3, 76) which conveys in the axial direction of the drum (1, 91).”

First, as previously mentioned with respect to claim 27, Faerber fails to disclose or suggest that the jubes disposed within one revolution of the spiral rib (“one processing chamber”) pass or advance to an adjacent revolution of the spiral rib (“the next processing chamber”).

Second, the only mention of a longitudinal conveyor in Faerber is endless conveyor 28 disposed at the inlet end 10 before the spiral ribs 20 or conveyor 35 disposed at the ramp 34 on the outlet end 14 after the spiral ribs 20. For Faerber to read on the present claimed invention

one of these conveyors 28, 35 would have to transport the jubes from one revolution of the spiral rib 20 to the next revolution. Since the conveyors 28, 35 are disposed before and after, respectively, the spiral ribs 20, they cannot transport the jubes from one revolution to the next revolution of the spiral ribs.

#### **Dependent Claim 29**

Claim 29 states “wherein the processing chambers provide ‘spraying’, ‘powdering’, ‘distributing the coating materials’, and ‘drying’.” (emphasis added) As acknowledged by the Examiner in the outstanding Office Action, in Faerber it is the hopper 21, not the spiral ribs 20 (which the Examiner maintains reads on the “processing chambers”) that provide the sugar for coating the jubes.

#### **Dependent Claims 30-32**

Claims 30-32 are rejected as obvious over Faerber in view of Rubens et al. Applicants submit that the Examiner has failed to establish a *prima facie* case of obviousness.

Specifically, the Examiner points to Rubens et al. for teaching “an apparatus for coating bakery products with dry powdery sugar (col. 1, lines 1-8). The coating takes place in a drum having strips of flexible material attached to the interior of the drum (col. 3, lines 56-66) and may be given the shape of a spiral (col. 4, lines 12-28). The flexible material is capable of being further adjusted in order to increase or decrease the degree of spiral in order to vary the capacity of the drum without changing its speed of rotation (col. 1, lines 32-37). This increasing or decreasing the spiral adjusts the size and shape of the area between the flexible strips and therefore adjusts the volume and axial length of the individual processing chambers. Additionally, the spiral adjustment controls the gravitational progression of the articles passing through the machine (i.e. the transport speed)(col. 4, lines 58-61).” {July 1, 2010 Non-Final Office Action: p. 5, ll. 11-21}

On the one hand, the strips 94 in Rubens et al. extend longitudinally or axially within drum 36 from the inlet to the outlet end (Figure 4). On the other hand, spiral rib 20 in Faerber is disposed radially or laterally within the inner diameter of the drum 1, with the Examiner asserting that the individual revolutions of the spiral rib are analogous to the claimed individual processing

chambers. This difference in arrangement of the spiral (either longitudinal or radial) teaches away from Faerber being modified in accordance with Rubens et al.

Even assuming, *arguendo*, that the references can properly be combined in such fashion, the combination fails to teach the specific limitations set forth in claims 30 and 31. Claim 30 states that “the volume of the individual processing chambers (7-13; 72-74) is adjustable.” Since no intersection is disclosed between the spiral rib 20 and strips 94, the volume of the individual revolutions of the spiral rib 20 (which the Examiner maintains are analogous to the claimed individual processing chambers) remains unchanged. Addressing claim 31 which further specifies that “the individual processing chambers (7-13; 72-74) has an adjustable axial length.” Applicants do not see how the longitudinally disposed strips 94 have any impact whatsoever on the adjustable axial length of the revolutions of the spiral rib 20. In order to adjust the axial length of the revolutions of the spiral rib 20 in Faerber, the strips 94 would have to be disposed radially or axially, rather than longitudinally or axially.

#### **New Dependent Claim 51**

Claim 51 provides “wherein the cyclical transport mode represents a clocked, cyclical rotation of the longitudinal conveyor such that a length of time that the product remains in the individual processing chambers is controllable, without moving the product in a longitudinal direction.” Support for this amendment to claim 51 is found in paragraph [0016] of the specification.

Faerber fails to disclose or suggest that the length of time that the product remains in any of the individual revolutions of the spiral ribs 20 is controllable without moving the product in a longitudinal direction. First, the only means for advancement of the product through the cylinder 15, 16 is via the rolling action of the cylinder and drum, rather than via a longitudinal conveyor. (Col. 3, ll. 17-20) Second, there is no control over the length of time in which the product remains in any revolution of the spiral rib without moving the product in a longitudinal direction.

For at least the foregoing reasons, Applicants submit that claims 26-32 and 50-51 are patentable over the prior art of record and requests that the application be passed to issuance. In view of Applicants arguments that no serious burden exists in the Examiner having to search all claims, rejoinder of withdrawn claims 33-49 is respectfully requested.

**CONDITIONAL PETITION FOR EXTENSION OF TIME**

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefor. The Assistant Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

**ADDITIONAL FEE**

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

Respectfully submitted,  
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